

17988  
RECORDATION NO. \_\_\_\_\_ FILED 1425

**REX**

NOV 2 1992 4 25 PM  
INTERSTATE COMMERCE COMMISSION

2-307A079

October 26, 1992

Interstate Commerce Commission  
Recordation Unit, Room 2303  
12th Street & Constitution Ave., NW  
Washington, DC 20423  
Attention: Ms. Mildred R. Lee

RE: Lease Agreement  
Schedule No. A

Dear Ms. Lee:

On behalf of Rex Leasing, Inc., the above instruments, in two (2) counterparts each, are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the recordation fee.

NOV 2 1992 4 25 PM  
RECEIVED

Please record the Lease Agreement dated October 1, 1992, between Rex Leasing, Inc. and Southern Illinois Railcar Co. under a new recordation number. Please record Schedule No. A under the Recordation No. assigned to the Lease Agreement.

The parties to the aforementioned instrument are listed below.

Rex Leasing, Inc. (Lessor)  
55 Ferncroft Road, Suite 110  
Danvers, MA 01923

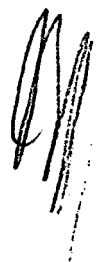
Southern Illinois Railcar Co. (Lessee)  
120 W. Market Street  
P.O. Box 288  
Troy, IL 62294

The Lease Agreement sets for the terms by which equipment is leased. Schedule No. A adds to the Lease Agreement thirty-eight (38) 4650 cubic foot, 100 ton covered hoppers bearing reporting marks ITLX 21000-21002, ITLX 21004-21030 and ITLX 21032-21039.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgement letter.

Sincerely,

  
Susan P. Hagen



LEASE AGREEMENT

17988  
RECORDATION NO. \_\_\_\_\_ FILED 1425  
NOV 2 1992 - 4 25 PM  
INTERSTATE COMMERCE COMMISSION

This Lease Agreement ("Agreement") is made as of October 1, 1992 between Rex Leasing, Inc., a New Jersey corporation ("Lessor"), and Southern Illinois Railcar Co., an Illinois corporation ("Lessee").

1. SCOPE OF AGREEMENT

- A. Agreement to Lease: Lessor and Lessee agree to lease the railroad car(s) ("Car(s)") described in the Schedules. "Schedule" means any schedule to this Agreement signed by both Lessor and Lessee. "Agreement" shall include all Schedules.
- B. Schedules Control: The terms of any Schedule shall control, as to Cars on such Schedule, over any inconsistent terms elsewhere in this Agreement.

2. TERM, DELIVERY AND ACCEPTANCE

- A. This Agreement shall remain in full force until terminated as to all Cars on Schedule A. The lease term with respect to any Car, and Lessee's obligation to pay rent for such Car, shall commence as described in Schedule A. The lease term with respect to any Car shall expire on the date set forth on Schedule A (the "Expiration Date"). Each Car shall be deemed delivered to Lessee on the date Lessor provides written notification to Lessee that such Car is available at the delivery point as set forth on Schedule A (the "Delivery Date").
- B. Each Car shall be deemed accepted unless Lessee otherwise notifies Lessor in writing within 2 days of the Delivery Date and, in any event, shall be deemed accepted if Lessee loads such Car.

3. SPECIFICATIONS, MOVEMENT EXPENSES AND AAR AGREEMENTS

- A. Car Types: Car descriptions and marks shall be as set forth on Schedule A.
- B. Movement and Other Charges: Lessee shall pay all expenses and charges for the movement of each Car from the delivery point with the exception of one switching charge which shall be for Lessor's account provided such switching charge shall not exceed \$ \_\_\_\_\_ per Car. If there is any additional charge for this one switching charge, it shall be for Lessee's account. Lessee hereby agrees to pay a remarking charge of \$ \_\_\_\_\_ per Car. From and after the Rent Commencement Date, Lessee shall pay, and shall defend and indemnify Lessor against, all switching, transportation, freight (including freight charges to and from a repair facility), demurrage and other charges assessed by any railroad or other entity with respect to such Car (including its movement, use or operation).
- C. AAR Agreements: Lessee agrees to abide by the Association of American Railroads ("AAR") Car Service and Car Hire Agreements with respect to the Cars.

4. RENT

- A. Payment of Rent: Lessee agrees to pay Lessor the monthly rent for each Car as set forth on Schedule A. Such rent shall become effective with respect to each Car upon the applicable Delivery Date, unless otherwise specified in the applicable Schedule, and shall continue throughout the applicable term and, subject to Subsection 12.C., until such Car is redelivered to Lessor in accordance with the terms of this Agreement. Lessee shall pay rent monthly in advance on the first day of each month. Partial months shall be prorated on a daily basis, based upon the actual number of days elapsed and the actual number of days in the month.
- B. Mileage Allowances: Insofar as applicable laws and regulations permit, and unless an event of default hereunder shall have occurred and be continuing, Lessee shall be entitled to all allowances received

by Lessor from railroads for the use of the Cars as soon as commercially practicable. All allowances received by Lessor shall be paid over to Lessee.

C. **Mileage Allowance Administration:** Lessee agrees, upon request by Lessor, to report promptly to Lessor each movement of the Cars. Such report shall contain the date, car number, origin, destination and routing of the movement.

D. **Excess Mileage Calculation:** After the end of each year, Lessor shall determine the total number of miles each Car traveled during such year, loaded and empty. If any Car traveled more than 30,000 miles during such year, Lessee agrees to pay Lessor as additional rent for such Car for such year the sum of three cents (\$.03) multiplied by the number of miles in excess of 30,000 that such Car traveled during such year. The determination of the total number of miles traveled by each Car during any year shall be made by multiplying the total number of miles such Car traveled while loaded by 2, unless Lessor can determine the exact mileage traveled by such Car. The calculations and payments set forth herein shall be prorated for any fractional part of a year.

## 5. RENT ABATEMENT DUE TO CAR REPAIR

A. This subsection shall apply to any Car that is damaged but not damaged beyond repair if the repair of such damage is not Lessee's responsibility under this Agreement. If, at Lessor's request, such Car is moved to a non-railroad shop for repair, rent shall abate as of the date such Car is switched onto the property of such repair shop and shall be reinstated effective as of the fifth day following the date Lessee is notified that such Car has been repaired and is ready for redelivery to Lessee. If such Car is delivered to a railroad shop for repairs and is not released for shipment to Lessee within five days after such delivery, rent shall abate as of the sixth day after the date such Car is switched onto the property of such railroad shop and shall be reinstated as of the date such Car is released from such shop.

B. For any Car that is repaired where Lessor and Lessee are each responsible under this Agreement for a portion of the repairs, rent shall only abate for the time that repairs for which Lessor is responsible are being performed.

C. If any Car is derailed, such derailment was not caused by Lessee and such Car is not rerailed within five days following such derailment, rent shall abate as of the date of such derailment and shall be reinstated as of the date of rerailment. However, if such Car requires repairs, Subsections 5.A. and 5.B. shall determine the date on which rent reinstatement shall occur.

## 6. MAINTENANCE

A. **Definition of Interchange Rules:** "Interchange Rules" mean collectively the Field Manual of the AAR Interchange Rules and the Office Manual of the AAR Interchange Rules. References herein to the Interchange Rules provide performance standards and criteria for the condition of the Cars and their maintenance and repair. However, as between Lessor and Lessee, this Agreement, not the Interchange Rules, governs who is responsible for performing and paying for maintenance and repairs.

B. **Definition of Lessee Maintenance Items:** "Lessee Maintenance Items" mean all interior lading fittings or devices, interior linings, specialty items, hatch covers, outlet gates and removable parts or attachments.

C. **Maintenance By Lessor:** Lessor shall maintain each Car in good working order and repair and in accordance with the standards set by the Interchange Rules and by the rules of any other applicable regulatory body, provided that Lessor has been notified by Lessee that such Car is in need of repairs. However, Lessor shall not be responsible for maintaining Lessee Maintenance Items or for repairs for which the Interchange Rules place responsibility upon third parties or for maintenance, repair or replacement that is Lessee's responsibility pursuant to Subsection 6.D. below.

**D. Maintenance By Lessee:**

- (I) Lessee shall maintain all Lessee Maintenance Items in good condition and repair, including renewal necessitated by repair to other portions of the Cars. If any Lessee Maintenance Item is removed, broken off or altered for any reason, or is missing, damaged, altered or replaced with a non-standard item, Lessee shall repair or replace it unless (a) Lessor has performed such removal or modification or has approved it in writing or has caused such damage or (b) responsibility has been assumed in writing by a third party.
- (II) If Lessee has applied any interior and/or exterior protective coating to the Cars, the application, maintenance, renewal and removal thereof shall be performed by Lessee at its expense.
- (III) All maintenance, repairs and replacements performed by Lessee shall be performed in accordance with the Interchange Rules and the rules of any other applicable regulatory body.
- (IV) Lessee shall not make any repairs without Lessor's prior written consent except the repairs described in clauses (I) and (II) of this subsection.
- (V) Whenever any Car is released for delivery to a repair facility for any reason, regardless of who is responsible for the repairs or maintenance being performed, Lessee, at its sole expense, shall clean such Car so that it is empty and free from any residue.
- (VI) Lessee shall reimburse Lessor for all repairs necessitated by Lessee's negligence or by improper loading of the Cars.
- (VII) Lessee shall, within 30 days of notification that Lessor has paid a bill for maintenance, repair or cleaning for which Lessee is responsible, reimburse Lessor for such payment.

**7. COMMODITIES**

- A. **Corrosion and Similar Damage:** Lessor makes no representation concerning the suitability of the Cars, or their linings, paint, coatings, sealants, or similar items, for use in the loading or shipping of commodities which contain active or passive chemical or physical properties which may result in damage or deterioration to the Cars, or to their linings, paint, coatings, sealants or similar items. Upon the initial delivery of any Car, Lessor will, if requested by Lessee, arrange a joint inspection of the Car at a location designated by Lessor. Unless prior to the first loading of the Car by Lessee a joint inspection report setting forth the nature and amount of any then existing damage is signed by both parties, it shall be conclusively presumed that the Car was free of corrosion and all other commodity-related damage at the Rent Commencement Date for such Car. If any Car suffers corrosion or similar deterioration or damage due to any commodity placed or allowed to accumulate in or on the Car, or to which the Car is exposed, Lessee shall be liable for the cost of correcting such deterioration or damage at the time the Car is returned to Lessor, regardless of whether or not such condition is due to Lessee's negligence. Such corrosion, deterioration or damage shall not be considered "normal wear and tear." Lessee agrees to indemnify and hold harmless Lessor from any liability, losses, damages, injuries, claims and demands and expenses, including reasonable counsel fees, arising out of, or as a result of, the loading and/or shipping in the cars of commodities which contain active or passive chemical or physical properties which may result in corrosion, deterioration or damage to the Cars, their lining, paint, coatings, sealants, or similar items. Lessee shall ensure that all commodities loaded in the Cars comply with all applicable tariffs, laws, rules and regulations.
- B. **Liability for Loss of Use of Cars and Damage to Commodities:** Lessor is not liable for any loss of, or damage to, commodities loaded or shipped in the Cars, regardless of the cause. Except as provided in Section 5, Lessor is not liable for loss of use of any Car regardless of the cause.

## 8. CAR MODIFICATIONS

- A. Except for applying protective coatings referred to in Section 6, Lessee will not modify or alter the physical structure of any Car without Lessor's prior written consent; provided, however, that this shall not relieve Lessee of its maintenance obligations.
- B. If (i) any equipment or appliance on any Car is required to be changed or replaced or (ii) any additional equipment or appliance is required to be installed on any Car or (iii) any Car is required to be modified or altered, in each case in order to comply with changes to any applicable law, regulation, requirement or rule (each of the foregoing shall be known as a "Modification"), Lessor may elect to either (a) terminate this Agreement, effective as of the date on which such Modification is required to be made or (b) make such Modification, pay the cost thereof, and increase the monthly rent. The amount of such monthly rent increase shall be an amount that will recover the cost of such Modification over its useful life using an implicit cost of capital of 3% over the prime rate announced by Chemical Bank N.A. in effect at the time such Modification is made. (To the extent the remaining lease term is shorter than such useful life, Lessee will only be paying increased rent through the end of the applicable Expiration Date.) If Lessor elects to terminate this Agreement, Lessee may void such termination by paying Lessor the full cost of such Modification and Lessor shall have such Modification made. Regardless of who pays, any Modification, and all parts thereof, shall be considered to be accession to the Car and title thereto shall be immediately vested in Lessor.

## 9. CASUALTY CARS; SUBSTITUTION

- A. Casualty While Not in Lessee's Possession: If any Car is destroyed or damaged to the extent that such damage exceeds the Depreciated Value ("DV") as provided in the Interchange Rules ("Damaged Beyond Repair") while not in the possession, custody or control of Lessee or Lessee's agent and such destruction or damage has been reported in accordance with the Interchange Rules, such Car will be removed from the rental calculations of this Agreement on the date such Car was destroyed or Damaged Beyond Repair. Lessor shall be entitled to all casualty proceeds from the Car.
- B. Casualty While in Lessee's Possession: If any Car, while in the possession, custody or control of Lessee or Lessee's agent, is destroyed or Damaged Beyond Repair, Lessee shall promptly notify Lessor in writing and shall remit to Lessor an amount equal to the DV of such Car within 30 days of receipt of an invoice from Lessor. Such Car shall remain subject to the terms of this Agreement, including the rental terms, until the date on which Lessee notifies Lessor of the destruction or Damage Beyond Repair.
- C. Substitution of Car: Lessor may at its expense replace any Car that has been destroyed or Damaged Beyond Repair with equipment of similar age, type and capacity upon prior written notice to Lessee. Lessor may also, at its expense and upon prior written notice to Lessee, replace any Car that Lessor determines is uneconomic for Lessor to repair or maintain with equipment of similar age, type and capacity.

## 10. POSSESSION AND USE

- A. Subordination; Use: This Agreement and Lessee's rights are subject and subordinate to the rights and remedies of any lender, owner or other party which finances the Cars. Financing agreements between such parties and Lessor determine whether Cars may be used in Canada or Mexico. No use greater than temporary or incidental may be made of the Cars in Canada and Mexico without Lessor's prior written consent, which may be given if financing agreements so permit.
- B. Compliance: Lessee agrees that while the Cars are in Lessee's possession, custody or control the Cars shall be used in compliance with all applicable laws, regulations and AAR rules.
- C. Marks to Show Ownership or Security Interests: Lessor may mark Cars to indicate the rights of Lessor or of any financing party. Lessee shall maintain such marks. Lessee may place any marking or

lettering on any Car or remove or change any reporting mark or Lessor's lettering only upon the written consent of Lessor; except that Lessee may, without the written consent of Lessor, board, placard or stencil the Cars with letters no larger than 2" high for the limited purpose of showing that the Cars are operated in Lessee's service.

- D. **Lessee Liens:** Lessee shall not directly or indirectly allow to exist encumbrances of any kind on or with regard to any Cars or this Agreement arising by, through or under it except those created for the benefit of Lessor or any financing party. Lessee shall within 5 days notify Lessor in writing if any such encumbrance arises and shall immediately at its expense cause it to be discharged.
- E. **Sublease Assignment:** Lessee hereby assigns all its rights and interest to any and all subleases allowed under Section 18.B. hereof that are entered into by Lessee for any or all the Cars. Upon an Event of Default under Section 11 herein, Lessor shall be entitled to notify each and every sublessee of the aforementioned assignment and begin collecting any and all rental payments owing thereunder, directly from the sublessee, to satisfy Lessee's rent hereunder. Lessee agrees to assist Lessor in giving all appropriate notice and filing to ensure that such assignments have been properly granted.

## 11. DEFAULT

- A. **Events of Default:** The occurrence of any of the following events shall be an Event of Default:
- (I) The nonpayment by Lessee of any sum required herein to be paid by Lessee within 10 days after written notification by Lessor that such payment is due;
  - (II) The breach by Lessee of any other term or condition of this Agreement which is not cured within 30 days after written notice of such breach;
  - (III) Lessee makes a general assignment for the benefit of creditors or it falls to pay, or states that it is unable to pay, or is unable to pay its debts generally as they become due;
  - (IV) In the event that Lessee becomes the debtor in a Chapter 11 proceeding under the Bankruptcy Code, the failure of Lessee to assume this Agreement within 90 days of the commencement of the Chapter 11 case;
  - (V) Any action, event or existence of any condition the effect of which would be to materially impair Lessee's ability to perform its obligations under this Agreement.
- B. **Lessor Remedies:** Upon the occurrence of any Event of Default, Lessor at its option may exercise any or all of the following rights and remedies and any additional rights and remedies permitted by law (none of which shall be exclusive) and shall be entitled to recover all its costs and expenses including attorneys' fees in enforcing its rights and remedies:
- (I) Terminate this Agreement and recover damages; and/or
  - (II) Proceed by any lawful means to enforce performance by Lessee of this Agreement and/or to recover damages for any breach thereof; and/or
  - (III) By notice in writing to Lessee, terminate Lessee's right to possession and use of some or all of the Cars, whereupon all right and interest of Lessee in such Cars shall terminate; thereupon Lessee shall at its expense promptly return such Cars to Lessor at such place as Lessor shall designate and in the condition required as provided in Section 1.2; or if Lessee does not so promptly return the Cars on demand Lessor may enter upon any premises where the Cars may be located and take possession of such Cars free from any right of Lessee. Lessee shall pay to Lessor all rental amounts which under the terms of this Agreement may then be due or would have become due for the duration of this Agreement with respect to terminated Cars and any other amounts or damages due hereunder.

## **12. EXPIRATION OR OTHER TERMINATION**

- A. **Return of Cars:** Upon the expiration or other termination of this Agreement with respect to any Car, Lessee, at its expense, shall return such Car to Lessor at such shop, storage yard, terminal facility or other point designated by Lessor (the "Return Location") or, if applicable, in accordance with Section 11.B. Written notice of the Return Location shall be given to Lessee no later than 30 days prior to the Expiration Date or any extension thereto as defined in Schedule A.
- B. **Condition Upon Return:**
- (I) Except for normal wear and tear and repairs that are Lessor's responsibility under Section 6, each Car Lessee shall return to Lessor (a) in as good condition, order and repair as when delivered to Lessee; (b) in interchange condition in accordance with the standards set by the Interchange Rules and by any other applicable AAR and Federal Railroad Administration ("FRA") rules and regulations, interchange condition to include the replacement of missing materials; (c) free of Rule 95 damage; (d) in condition suitable for loading; (e) free of all accumulations or deposits from commodities; and (f) free of corrosion and any other commodity-related damage. Any item that is damaged or worn beyond what is considered to be normal by the original component manufacturer shall be deemed to have been damaged beyond normal wear and tear and shall be Lessee's responsibility. In addition, if Lessor has permitted Lessee to place any logos or special paint on any Car, Lessee shall have such logos or special paint removed.
  - (II) Lessor may inspect any Car which is returned to it, within a reasonable time after such return. Lessee shall be entitled to participate in any such inspection. Lessee agrees to pay Lessor within 30 days of receipt of an invoice for repairs, replacements and cleaning for which Lessee is responsible. Lessor may invoice Lessee before having such work performed.
- C. **Holdover Rent:** Until any Car is returned to Lessor, Lessee shall continue to pay rent for such Car and Lessor shall keep all other payments and other obligations under this Agreement as though the expiration or other termination had not occurred. If Lessor requests in writing the return of any Car and such Car has not been returned, Lessee, upon written notice from Lessor, shall pay 150% of the rent in effect immediately prior to expiration or termination. Nothing in this Section shall give Lessee the right to retain possession of any Car after expiration or other termination of this Agreement with respect to such Car.

## **13. RECORD KEEPING**

Lessee agrees to furnish Lessor promptly, at Lessor's request, with complete and accurate information reasonably requested by Lessor pertaining to the Cars, their movement, repairs and maintenance in accordance with AAR format.

## **14. INSPECTION**

Lessee shall permit Lessor reasonable access to Lessee's property during normal business hours to examine the Cars or Lessee's records relating to the Cars. Lessor shall provide Lessee 24 hours prior notice of inspection.

## **15. INSURANCE**

Lessee shall at its expense carry and maintain on the Cars while on Lessee's property or under Lessee's custody or control (i) all risk, physical loss and damage insurance and (ii) public liability insurance. Insurance policies shall be in such amounts and against risks customarily insured against by Lessee, and in no event shall provide less coverage (in terms of type, risks insured and amount) than is customary and reasonable for enterprises of Lessee's size in Lessee's industry. Lessee's policies shall name Lessor as additional insured and as loss payee. Upon execution hereof, annually and upon Lessor's request, Lessee shall provide Lessor insurance certificates from Lessee's carrier or broker evidencing the insurance required hereunder.

Lessee's insurance shall be primary without right of contribution from any insurance carried by Lessor. If Lessee customarily self-insures against such risks with respect to its own property, Lessee may self-insure to the same extent with respect to the Cars.

**16. TAXES**

Lessor shall pay, and shall defend and indemnify Lessee against, all property taxes assessed against or levied upon the Cars and shall file all property tax returns. Lessee shall forward to Lessor upon receipt copies of any correspondence, notifications of proposed assessments and tax bills it may receive with respect to such property taxes. Lessee shall be liable for, and shall defend and indemnify Lessor against, all other taxes, duties or government impositions with respect to the Cars.

**17. INDEMNITIES**

Lessee agrees to defend, indemnify and hold harmless Lessor from any and all claims, losses, damages, liabilities, costs, and expenses (including attorneys' fees) (collectively, "Damages") with respect to, caused by, or arising out of the Cars other than Damages caused by Lessor's negligence or defects in materials and workmanship incorporated into the Cars by Lessor or the manufacturer of the Cars. Lessee agrees to pay any or all brokerage fees or similar type fees incurred in connection or related to this Agreement including but not limited to any obligations owing to Harding and Associates. The indemnities contained in this Agreement shall survive the expiration or termination of this Agreement.

**18. MISCELLANEOUS**

- A. **No Assignment Without Lessor Consent:** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; PROVIDED, HOWEVER, THAT LESSEE MAY NOT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR PLEDGE OR ASSIGN THIS AGREEMENT OR ANY OF ITS RIGHTS OR OBLIGATIONS HEREUNDER. ANY PURPORTED ASSIGNMENT IN VIOLATION HEREOF SHALL BE VOID.
- B. **Subleases:** Lessee may sublease the Cars provided that: (i) Lessee shall notify Lessor of any sublease and the terms thereof and Lessee shall be authorized to assign such sublease, under the terms therein, to Lessor in accordance with Section 10.E.; (ii) Lessee shall continue to remain liable to Lessor under this Agreement; (iii) any sublease shall contain language which expressly makes such sublease subject and subordinate to this Agreement and to the rights of the financing parties described in Subsection 10.A.; (iv) no Car shall be subject to a sublease more than 12 months of any calendar year; and (v) such sublease shall provide that the Cars may be used only within the boundaries of permitted use set forth in Subsection 10.A. and that Lessee is in compliance with Section 10.E.
- C. **Assignment by Lessor:** All rights and obligations of Lessor under this Agreement, and Lessor's interest in the Cars and in the rents, may be assigned, pledged, or transferred in whole or in part without notice to or consent by Lessee.
- D. **Additional Documents:** Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition, financing or use of the Cars.
- E. **No Waiver:** No delay, waiver, indulgence or partial exercise by Lessor of any right, power, or remedy shall preclude any further exercise thereof or the exercise of any additional right, power or remedy.
- F. **Financial Information:** On or about September 1, 1993, Lessee will promptly furnish to Lessor an annual report or audited financial statements, or unaudited financial statements with the audited financial statements of its parent company, and any other related information reasonably requested.



- G. **No Warranties:** Lessor's obligations with respect to the Cars are expressly limited to those set forth in this Agreement, and LESSOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. LESSOR MAKES NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, NOR SHALL LESSOR HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR IN CONNECTION WITH ANY CAR.
- H. **Notices:** Any notices required or permitted to be given hereunder shall be deemed given when sent by telecopy facsimile or telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:
- |  |   |
|--|---|
| <b>Lessor:</b><br>Rex Leasing, Inc.<br>Attention: Contract Administration<br>55 Ferncroft Road, Suite 110<br>Danvers, MA 01923 | <b>Lessee:</b><br>Southern Illinois Railcar Co.<br>Attention: _____<br>120 W. Market Street<br>P.O. Box 288<br>Troy, IL 62294 |
|--|---|
- or to such other addresses as Lessor and Lessee may from time to time designate.
- I. **Applicable Law:** The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Delaware without regard to Delaware's choice of law doctrine.
- J. **Survival:** The obligations of Lessor and Lessee hereunder shall survive the expiration or other termination of this Agreement.
- K. **Entire Agreement:** This Agreement represents the entire agreement. This Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
- L. **Counterparts:** This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute one contract.
- M. **Days:** All references to days herein shall mean calendar days and not business days.

Each party, pursuant to due corporate authority, has caused this Agreement to be executed by its authorized officer or other employee, and each of the undersigned declares under penalty of perjury that he or she holds the title indicated below, that the execution of this Agreement was the free act and deed of the corporation, that the foregoing is true and correct and that this Agreement was executed on the date indicated below.

REX LEASING, INC., Lessor

By: William D. Evans

Title: Chairman, Managing Director

Date: 10/1/92

SOUTHERN ILLINOIS RAILCAR CO., Lessee

By: Paul J. Piro

Title: President

Date: 10/1/92

SCHEDULE NO. A

This Schedule No. A to that certain Lease Agreement (the "Agreement") made as of October 1, 1992 between Rex Leasing, Inc. ("Lessor") and Southern Illinois Railcar Co. ("Lessee") is made as of October 1, 1992.

Lessor and Lessee agree as follows:

1. **Capitalized Terms:** All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.

2. **Cars Leased:** Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

Number of Cars:

Description: 4650 cubic foot, 100 ton covered hoppers

Reporting Marks: \_\_\_\_\_, Inclusive  
\_\_\_\_\_, Inclusive  
\_\_\_\_\_, Inclusive

3. **Commencement Date:**

The lease term with respect to the Cars in this Schedule, and Lessee's obligation to pay rent, shall commence \_\_\_\_\_ upon written notification by Lessor that the \_\_\_\_\_ Car is available at the Union Pacific, Council Bluffs Iowa (the "Delivery Point"). Upon such notification, Lessor shall invoice and Lessee shall pay, within 2 business days of receipt thereunder, rent for all \_\_\_\_\_ Cars for the remaining days in October, 1992 (\$ \_\_\_\_\_ pro rata for 31 days per Car or \$ \_\_\_\_\_ per day per Car). Lessor shall invoice and Lessee shall pay rent for the \_\_\_\_\_ Car for the remaining days in October, 1992 (\$ \_\_\_\_\_ pro rata for 31 days or \$ \_\_\_\_\_ per day per Car) on the first month's invoice following delivery of the \_\_\_\_\_ Car.

4. **Rent Per Car Per Month:**

\$ \_\_\_\_\_ per Car per month in advance commencing on \_\_\_\_\_ and due on the first of each of the following months for the term of the Agreement.

5. **Expiration Date:**

The lease term shall expire for all Cars \_\_\_\_\_ after the first day of the first month following the Delivery Date of the last Car covered hereunder (the "Expiration Date"). If Lessee is in compliance with all the terms and conditions of the Agreement and has not been in default of any of the provisions in Section 11 hereof during the previous \_\_\_\_\_ months, the term of this Agreement shall be automatically extended for an additional \_\_\_\_\_ months from the Expiration Date in which case all terms and conditions of this Agreement shall apply for the additional \_\_\_\_\_ month period.

Each party, pursuant to due corporate authority, has caused this Schedule to be executed by its authorized officer or other employee, and each of the undersigned declares under penalty of perjury that he or she holds the title indicated below, that the execution of this Schedule was the free act and deed of the corporation, that the foregoing is true and correct and that this Schedule was executed on the date indicated below.

REX LEASING, INC., Lessor

By: William B. Curran

Title: Chairman, Managing Director

Date: 10/1/92

SOUTHERN ILLINOIS RAIL CAR CO., Lessee

By: Robert J. Smith

Title: President

Date: 10/7/92

*Commonwealth*

~~STATE OF MASSACHUSETTS~~ )

SS:

COUNTY OF ESSEX )

On this 1st day of October, 1992, before me personally appeared William D. Evans, to me personally known, who being by me duly sworn, says that he is Chairman, Managing Director of REX LEASING, INC., that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Christine P. Nichols*  
Notary Public

My Commission expires: *February 6, 1998*

STATE OF ILLINOIS )

SS:

COUNTY OF MADISON )

On this 19th day of October, 1992, before me personally appeared Fred L. Parsons, to me personally known, who being by me duly sworn, says that he is PRESIDENT of SOUTHERN ILLINOIS RAILCAR CO., that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Louise A. Rinkel*  
Notary Public

My Commission expires: 8-8-96

